STATE OF MICHIGAN
IN THE SUPREME COURT

In the Matter of
ARS, a Minor.

Supreme Court No.

Court of Appeals No.318638

Phillip Schnebelt and
Pamila Schnebelt,
Petitioners/Appellants

Shiawassee County Circuit
Family Division
No.13-003727-AF
Hon. Thomas J. Dignan

v.

Derek Musall,
Respondent/Appellee

and

Kayleigh Marie Schnebelt,
Respondent/Appellant

APPELLANTS' SUPPLEMENTAL BRIEF

Submitted by:

Liisa R. Speaker (P65728)
SPEAKER LAW FIRM, PLLC
230 N. Sycamore Street
Lansing, MI 48933
(517) 482-8933
lspeaker@speakerlaw.com

January 21, 2015

TABLE OF CONTENTS

INDEX OF AUTHORITIES

MICHIGAN CASES:

UNITED STATES SUPREME COURT CASES:

STATUTES AND COURT RULES:

SUMMARY OF ARGUMENT

This Court should reverse the decisions of the Trial Court and Court of Appeals because the Trial Court did not honor the intent of the Legislature, or the binding precedent of *In re MKK*, 286 Mich App 546; 781 NW2d 132 (2009), when it failed to give the adoption proceeding the "highest priority" on its docket. Instead, the Trial Court elevated the paternity action above the adoption action, even though the paternity action was filed *after* the adoption case, even though Respondent did not provide any support to his daughter during her lifetime, even thought Respondent failed to begin the process of establishing his paternity until she was 11 months old. The Trial Court relied on the fact that the parties did not dispute that there was biological connection between Respondent and the child. The United State Supreme Court and Michigan courts have confirmed that a biological connection is not enough. Instead of following the statutory mandate, the Trial Court adjourned the adoption case *three* times, each in favor of the later-filed paternity action. Respondent failed to demonstrate that there was good cause to adjourn the adoption proceeding in favor of the paternity action, and did not even come close to the facts outlined in the *MKK* case. The Trial Court disregarded the intent of the Legislature in enacting MCL 710.25 regarding the "highest priority" and "good cause," disregarded the goal of the Adoption Code to put the child everyone else as required by MCL 710.21a, and failed to strictly construe the Adoption Code as required by law because the Code is in contravention of common law.

In addition to these significant statutory violations, the Trial Court's finding that Respondent was a "do something" father is not supported by the facts of this case, and the numerous cases analyzing the issue of whether a parent has provided "substantial and regular support" in accordance with that parties' ability during one of the two relevant time

periods indicated by the Adoption Code. Here, the relevant time periods were during Kayleigh's pregnancy with the child, and during the 90 days before the notice of hearing in the adoption case (or December 25, 2012 through March 25, 2013). Respondent admits that during Kayleigh's pregnancy he at most gave her the equivalent of $200 and a bag of clothes to share with both the girls. On its face, this does not amount to *substantial and regular support*. It is undisputed that during the later 90-day time period, Respondent did not attempt to provide any support at all, even the paltry amount he had provided during Kayleigh's pregnancy. It is also undisputed that Respondent did not have an established custodial relationship with the child by seeing his child no more than 12 times in a short period of her life (from June 2012 to September 2012). Based on these facts, Respondent is a "do nothing" father, and this Court should reverse the Trial Court's and Court of Appeals' decisions, and remand to the Trial Court for a hearing under MCL 710.39(1) as to whether Respondent is fit and has an ability to properly care for the child, and whether it is in the best interests of the child to grant custody to him.

STATEMENT OF FACTS

The Parties and Background.

This case involves three distinct sets of parties: the petitioners for adoption – Pamila and Phillip Schnebelt; the Biological Mother – Kayleigh Schnebelt (daughter of the petitioners); and the Putative Father – Derek Musall. The child at issue in this appeal, Adelyn Schnebelt, was born on March 29, 2012. (I:46).

Kayleigh and Mr. Musall had been involved in an on-again, off-again relationship

since mid-2009. (I:29).[1] Two children were the product of this relationship: Gracie and Adelyn. Gracie was born in February 2010. (I:52).[2] In September 2010, Petitioners Pamila and Phillip, adopted Gracie by consent of Kayleigh and Mr. Musall. (I: 53, 159-160; PX A).

Mr. Musall's minimal support during Kayleigh's pregnancy with Adelyn.

In July 2011, Kayleigh conceived again. (I:58). She discovered her pregnancy in August 2011. (I:58). Two days later, Kayleigh informed Mr. Musall of the pregnancy. (I:30, 70). By that time, she and Mr. Musall had gone their separate ways, and Mr. Musall began dating the woman who is now his wife. (I:191). When Kayleigh found out she was pregnant, she was living with her parents. (I:51)

The parties had conflicting versions about the amount of support Mr. Musall provided during the pregnancy. But even focusing on Mr. Musall's version of the facts, he testified that he did not talk to Kayleigh about how he could support her through her pregnancy – "We just kind of played it by ear." (I:165). Mr. Musall admitted at trial that he never attended a single doctor's appointment with Kayleigh during her pregnancy with Adelyn. (I:71). Mr. Musall testified that he gave Kayleigh money on a few occasions during her pregnancy with Adelyn, but he was unable to specify the dates when he gave her money or how much money he gave her. (I:71-72). He indicated that he would have given her a little over $200 total during the course of her pregnancy. (I:72-73). Mr. Musall testified that he "didn't

---

[1] The evidentiary hearing on the adoption matter took place over two days: July 19, 2013 and August 16, 2013. Citations to these transcripts will appear as (Vol: Page).

[2] There was a great deal of testimony regarding the parties' oldest child Gracie and Mr. Musall's relationship with that child. (*See e.g.*, I: 132, 150, 159, 177). The Trial Court also gave weight to his relationship with Gracie in its consideration of the adoption of Adelyn even though these facts are irrelevant to the adoption case. (09/26/13 Opinion, pp. 3-4).

hardly see her at all during the pregnancy," indicating that his statement in the pre-trial brief, that he gave her $30 to $100 per week during the pregnancy was inaccurate. (I:73). He then admitted that his pleadings before the Trial Court may have been inaccurate because the pleadings may have confused support that he gave to Kayleigh during her pregnancy with Gracie with support he may have given her during her pregnancy with Adelyn. (I:74). He testified that during the pregnancy with Adelyn, however, he gave Kayleigh a garbage bag full of girls clothes that he had stored in his home. (I:83). His mother, Laura Musall, also testified that he was not there for Kayleigh during the pregnancy. (II:174).

At the beginning of her pregnancy, Mr. Musall and Kayleigh discussed him being present during Adelyn's birth. (I:59). However, Kayleigh did not tell Mr. Musall when Adelyn was born "[b]ecause he wasn't there the whole entire pregnancy. I didn't want him to be there for the birth." (I:34). Kayleigh gave birth to Adelyn on March 29, 2012. (I:46).

Mr. Musall's absent support after Adelyn's birth.

Kayleigh testified that Mr. Musall has not offered her money or handed her any cash since Adelyn's birth. (I:32, 37). She testified that Mr. Musall would offer to give her money or to help pay for expenses with Adelyn, "but he never came through." (I:50). Pam Schnebelt also testified that in Adelyn's 17 months of life, the entire time the child being under her care, Mr. Musall has never given money to help raise the child. (II:79).

Mr. Musall admitted that he has never paid for any of Adelyn's medical care or daycare expenses. (I:84, 85). He did not send her a gift for Christmas 2012 or her first birthday. (I:85). He admitted that since Adelyn's birth he has never sent Kayleigh money for Adelyn. (I:81). He admitted he has never purchased formula, clothing or diapers for Adelyn. (I:81-82).

Mr. Musall testified that after Adelyn was born he would buy diapers and formula to keep at his mother's home. (I:166). Pam Schnebelt testified that when she would drop the girls off at Mrs. Musall's home on the four occasions that Mrs. Musall babysat, she made sure the children went with a diaper bag full of clothes, food, wipes, and diapers. (II:82). Pam also testified that when she picked up the children all the contents of the diapers bag had been used. (II:82). Mr. Musall testified that he never gave support to Kayleigh, and he testified that he has had "zero contact with [Kayleigh]." (I:167).

Mr. Musall's limited contact with Adelyn.

The parties also disputed how much contact Mr. Musall had with Adelyn. Focusing on Mr. Musall's version of the facts, Mr. Musall testified that he had seen Adelyn a few times. (I:75). He testified that the first time he saw the child was in June 2012, when she was about three months old. (I:75). He said that his next visit with the child was brief, and must have occurred sometime between June 2012 and July 4, 2012. (I:76). His next visit with the child was during a fourth of July parade. (I:76). He "hung out with Kayleigh and Gracie and Adelyn" at his mother's home. (I:76). Mr. Musall testified that he has seen Adelyn perhaps twelve times in her sixteen months of life. (I: 244). Significantly, Mr. Musall admitted that he had zero contact with Adelyn after September 2012. (I:213, 80). Mr. Musall has contacted Kayleigh once or twice via Facebook or text message to inquire about Adelyn. (I:36; I:215).

Laura Musall, Putative-Father's mother, babysat the children for a few weeks in September 2012. (I:41). Kayleigh had just started a new job, and Mrs. Musall asked her if she could watch the children two days a week. (I:41). Initially, Kayleigh decided that Mrs. Musall could watch the children, but the arrangement ended after two weeks. (I:42-43).

To her knowledge, Mr. Musall was never present when his mother cared for the girls. (I:47). He did not live with his mother at that time. (I:47).

Mr. Musall testified that this babysitting arrangement with his mother went on for much more than a few weeks, alleging they continued for ten weeks. (I:77). Mr. Musall testified that he would see Gracie and Adelyn twice a week for about six hours each time when his mother babysat the girls, and that he would take off work in order to visit with Adelyn and Gracie when his mother babysat. (I:76, 90). He later admitted that "sometimes" these visits would be once a week. (I:210). "You know, is that when my mom got her that's pretty much the only time I could see her cuz establishing parenting time with [Kayleigh] wasn't gonna happen." (I:210). He testified that during these visits he would change diapers, play with Gracie, and hold and put Adelyn to sleep. (I:212). Adelyn would have been just a few months old at this time. (I:212). He admitted that since September 2012, once his mother stopped watching the girls, that he has had zero contact with his children. (I:213).

David and Rosemary Lobdell, Derek Musall's grandparents, testified on his behalf. Mr. Lobdell said he knew that Mr. Musall had seen Adelyn a few times, but did not know whether or not he was parenting her. (II:106). Mrs. Lobdell testified that she had seen Adelyn 5 or 6 times total. (II:125). She saw Mr. Musall with Adelyn when he visited her at Laura Musall's house. (II:122). She also claimed that Mr. Musall and Adelyn have a bond because Adelyn didn't cry when he held her. (II:115).

According to Jacqueline Kallin, Pamila Schnebelt's mother, she babysat both Gracie and Adelyn five to seven days a week. (II:38). Pam Schnebelt would drop both the girls off at her home and provide food and diapers. (II:40). Ms. Kallin also testified that Laura Musall, Derek Musall's mother, did babysit both girls in September 2012 on the 19th, 20th,

26th, and 27th. (II:40). Ms. Kallin stated she began to watch the girls again full time in October 2012. (II:43). Pam Schnebelt's testimony corroborated that these were the only dates that Laura Musall babysat Gracie and Adelyn. (II:81).

Kayleigh testified that Mr. Musall has no relationship with Adelyn. (I:45). She stated that he does not know anything about her including her sleep schedule, eating schedule, how many teeth she has, what words she can say, when she started walking, her favorite show, and that her sister is her best friend. (I:45).

Mr. Musall admitted that he had never had an overnight visit with the child. (I:77). He testified that he spent some alone time with Adelyn once in August 2012 for about an hour. (I: 78). Mr. Musall testified that he requested parenting time with Adelyn on a few occasions, but he could not recall how many. (I:79). "It was this far and between. Like I was getting to see them so I was content with that, you know, so I didn't really want to push for like overnighters or things like that. I didn't want to personally get this involved in the courts, so I was just trying to play it safe and just do what she would want me to do." (I:79).

Mr. Musall testified that he knows very little about the child: he does not know what her first word was, what size clothing she wears, her daily routine, or how many teeth she has. (I:81). He has never taken her to the doctor or cared for her when she was sick. (I:81).

Pamila and Phillip Schnebelt File An Adoption Action, and Mr. Musall Responds by Filing a Paternity Claim Five Weeks Later.

When Adelyn was eight months old, Kayleigh created an adoption plan for her daughter, allowing her parents to file the petition for adoption of Adelyn. (I:46). On January 7, 2013, Pamila and Phillip Schnebelt petitioned to adopt Adelyn. (01/07/13 Petition for

Adoption; Adoption Case ROA). The case was assigned to Judge Dignan, File No. 13-003727-AF. (Adoption ROA). On January 23, 2013, Kayleigh filed a Petition for Hearing to Identify Father and Determine or Terminate His Rights, identifying Derek Scott Musall as the putative father. (01/23/13 Petition for Hearing).

Then, on February 15, 2013, Mr. Musall filed a complaint for paternity – five weeks after the adoption proceedings began and when Adelyn was 11 months old. (Paternity ROA). The paternity action was originally assigned to Judge Lostracco, File No. 13-004447-DP, but was later re-assigned to Judge Dignan. (Paternity ROA; 04/03/13 Order of Reassignment). At no point in these proceedings did Mr. Musall ever file a notice of intent to claim paternity under MCL 710.33.

The Notice of Hearing in the adoption case was served on March 26, 2013, and scheduled a hearing date of April 22, 2013. (03/26/13 NOH). The March 26, 2013 date is critical because the Adoption Code requires the Trial Court to look at the 90-day period preceding the notice of hearing to determine whether the putative father has provided substantial and regular support. MCL 710.39(2). Thus, the critical time period is from **December 25, 2012 until March 25, 2013**. MCL 710.39(2).

The Trial Court in the Paternity Case entered an order for genetic testing on April 16, 2013. (04/16/13 Order Genetic Testing). The adoption hearing to identify the father was adjourned until May 17, 2013, presumably so Mr. Musall could obtain the DNA test results. (04/24/13 NOH). One day prior to the May 17, 2013 hearing, the Schnebelts received notice that the hearing would be cancelled as the "paternity results are not in." (05/17/13 Motion to Proceed with Hearing). Petitioners filed a motion to proceed with the scheduled hearing, but that hearing was adjourned again until July 19, 2013. (05/17/13 Motion to Proceed with Hearing; 05/28/13 NOH; Adoption ROA).

On June 20, 2013, Mr. Musall filed a motion to adjourn the scheduled July 19, 2013 adoption hearing because he was still waiting for the DNA results. (06/20/13 Motion to Adjourn). The genetic testing for Adelyn was scheduled for July 10, 2013. (06/20/13 Motion to Adjourn, ¶ 10). Mr. Musall was advised by the testing center that it would take 7-10 days to obtain the results once they obtained the sample from Adelyn. (06/20/13 Motion to Adjourn, ¶ 11). Mr. Musall, therefore, did not expect the results of the DNA testing to arrive before the July 19, 2013 hearing and requested that the Trial Court adjourn that evidentiary hearing. (06/20/13 Motion to Adjourn, ¶ 12).

It is not clear from the record what happened with this motion. It appears that on the day of the scheduled July 11 hearing, there was an off the record conference between the Trial Court and the attorney for Mr. Musall. (07/11/13 NOH; I: 9-10). Attorneys for Kayleigh contended that they did not receive notice of the hearing. (I:8). In any event, the Trial Court did not hold a hearing or rule on the Motion to Adjourn. (I:9; Adoption ROA). It appears that the Trial Court declined to rule on the motion because it believed that the DNA testing would be available by July 19, 2013 and so it, instead, instructed Mr. Musall's attorney to bring the DNA testing results with him to the hearing. (I:5).

The adoption hearing began on July 19, 2013. (07/19/13 Transcript). The testimony adduced during these two full day hearings has already been summarized above. The DNA test results were presented to the Trial Court which indicated that there was a greater than 99% chance that Mr. Musall was Adelyn's biological father. (I:5). Nonetheless, and over the objection of Mr. Musall's attorney, the Trial Court declined to ROA the adoption hearing. (I:17). The Trial Court noted that the "DP action is not noticed for today," so it decided to proceed with the adoption hearing. (I:7, 9).

Following the first day of hearing, Mr. Musall's attorney filed a motion for summary

disposition in the paternity action, asking the Trial Court to declare Mr. Musall the legal father of Adelyn. (07/24/13 MSD; Paternity ROA). The motion for summary disposition was noticed for hearing on August 16, 2013, although the actual occurrence of that hearing is not indicated on the Paternity ROA. (Paternity ROA; 07/24/13 NOH for MSD).

Instead, the Trial Court apparently held the hearing on summary disposition in the paternity case at the same time as the second day of the adoption trial. (II:6). The attorneys started to present their arguments on the motion for summary disposition when the proceeding was interrupted so that the Trial Court could take the testimony of Philip Schnebelt, who was calling in from his army deployment in Cuba to testify in the adoption matter. (II:6-9). After entertaining additional arguments on the motion, (II:24-36), the Trial Court reserved its ruling on the motion for summary disposition. (II:36). The Trial Court advised that it would make "contemporaneous rulings on the paternity matter and the adoption matter." (II:127). At the end of the adoption hearing, the Trial Court entertained additional arguments about the paternity action. (II:205-264). Ultimately, the Trial Court decided that it would not reach a decision that day. (II:264).

The Trial Court Declares Mr. Musall Legal Father in Its Opinion in the Adoption Case and also finds that Mr. Musall provided substantial and regular support to satisfy MCL 710.39(2) of the Adoption Code.

The Trial Court issued a written opinion on September 26, 2013, which is described below. (09/26/13 Opinion, attached at **Tab A**). Although the cases had never been consolidated, the Trial Court captioned its Opinion and Order in the Adoption case with the file number from the Paternity action. (09/26/13 Opinion, p.1).

The very first page of the Trial Court's opinion indicates that the Trial Court felt that petitioners had conceded that Mr. Musall was the legal father of Adelyn. (09/26/13 Opinion,

p. 1). This is inaccurate since during trial petitioners merely explained that they did not contest that Mr. Musall was the biological father of Adelyn, but that he did not, at that time, have a legal relationship to Adelyn. (I:12).

The Trial Court discussed that it "did not issue a formal stay on the paternity proceedings but rather allow[ed] the parties to go forward with their proofs on the adoption petition while preserving the courts right to rule on either and or both petitions." (09/26/13 Opinion, p. 3). The Trial Court then detailed the history between the parties and the birth of their first child in detail. (09/26/13 Opinion, pp. 3-4). It also made some credibility findings, noting "Mr. Musall struck the court as a very candid witness he seemed to freely acknowledge things that were both in and against his personal interest." (09/26/13 Opinion, p. 4). The Trial Court gave a brief synopsis of the claims of support made by Mr. Musall and the contradictory testimony from Kayleigh that Mr. Musall gave no support to her during her pregnancy with Adelyn. (09/26/13 Opinion, p. 4). The Trial Court then found that Mr. Musall did not offer the level of support that he claimed. (09/26/13 Opinion, p. 4).

The Trial Court also found that Kayleigh and Pamila frustrated Mr. Musall's wishes to be present at Adelyn's birth. (09/26/13 Opinion, p. 4). It indicated that Mr. Musall's "moving on to another relationship may have been an impetus in the acute break down in the cooperation of parenthood between [Mr. Musall] and Kayleigh." (09/26/13 Opinion, p. 5). It then found that there was good cause to stay the adoption proceedings in favor of the paternity action and found Derek Musall as the legal father. (09/26/13 Opinion, p. 5).

The Trial Court continued, finding that Mr. Musall "attempted to provide substantial and regular support in accordance with his ability to provide such support or care for the mother during the pregnancy." (09/26/13 Opinion, p. 6). It highlighted that Mr. Musall was certainly not "'father of the year,'" but Mr. Musall "did attempt to provide some support and

contact with regularity he admitted that he did not go to any of the doctor appointments but the court finds that Pam Schnebelt was also a looming presence in determining who would have contact with whom." (09/26/13 Opinion, p. 6). The Trial Court also accepted Mr. Musall's testimony that he had a desire to stay out of court as "reasonable," but that it does "rise in this case to the level of his attempts of support being somewhat diminished." (09/26/13 Opinion, p. 6). The Trial Court then denied relief to the petitioners in the Adoption action. (09/26/13 Opinion, p. 6).

The Court of Appeals Affirms the Trial Court's Order Declaring Mr. Musall the legal father in the adoption proceeding and denying the petition to adopt.

The Court of Appeals affirmed the Trial Court's erroneous determination. The Court of Appeals acknowledged the unusual procedural posture – that the Trial Court held an evidentiary hearing for the adoption proceeding and only then dismissed the adoption request, while simultaneously ruling in the adoption order that Musall is the child's legal father. (06/12/14 COA Opinion, p. 1, attached at **Tab B**). Ignoring any flaws with this procedure, the Court of Appeals went on to apply a good cause analysis under the *In re MKK* precedent and held that Mr. Musall was able to meet the good cause standard because of his biological connection to the child and because he did not unreasonably delay the proceeding. (06/12/14 COA Opinion, p.2).

ARGUMENT

Appellants Pamela and Phillip Schnebelt provide this Supplemental Brief as requested by this Court. Appellants filed their initial Application on September 25, 2014 in their adoption case. This Court requested that each party file a supplemental brief addressing several issues, which Appellants directly answer below.

I. The Putative Father did not demonstrate adequate "good cause" under Section 25 of the Adoption Code, MCL 710.25(2), for the adjournment of the adoption proceeding because he never filed an intent to claim paternity, never established a legal relationship with the child, admittedly contributed at most $200 to the Biological Mother during the pregnancy and nothing to the child for the next 18 months, and significantly delayed in initiating any paternity action, only filing as a measure to thwart the adoption proceeding.

The Trial Court and the Court of Appeals improperly found that the Putative Father had demonstrated "good cause" to adjourn the adoption proceeding. Importantly, when the Trial Court paused the adoption proceeding (for the **third time**) so that it could make a determination of the parentage issue, Mr. Musall was nothing more than a putative father whose efforts failed to create any kind of necessary "good cause" to stay the adoption, let alone establish him as a "do something" father so as to enjoy the status of "legal father" for purpose of the adoption proceeding. Nevertheless, the Trial Court's inaccurate analysis led to the conclusion that his efforts were enough to satisfy both inquiries, and the Court of Appeals improperly affirmed.

The Adoption Code provides the following:

> (1) All proceedings under this chapter shall be considered to have **the highest priority** and **shall be advanced on the court docket so as to provide for their earliest practicable disposition**.
>
> (2) An adjournment or continuance of a proceeding under this

> chapter **shall not be granted without a showing of good cause**.

MCL 710.25 (emphasis added). Because of the importance of timing in adoption matters, the Adoption Code clearly establishes a heightened burden which is required for an individual to adjourn an already proceeding action. The Legislature could have enacted a statute that allows a putative father the right to halt an adoption proceeding for any reason, but it instead required "good cause." The Adoption Code does not define what constitutes "good cause"; however, case law has endeavored to do so. *In re MKK*, 286 Mich App 546; 781 NW2d 132 (2009), is the only published case that has provided any analysis of the Legislature's directives in Section 25 of the Adoption Code. *MKK* establishes the framework for analyzing "good cause" to adjourn an adoption proceeding.

MKK involved a putative father who wished to parent the child that the birth mother sought to place for adoption. *Id.* at 548-54. Mr. Mattson, the putative father in that case, demonstrated his genuine desire to care for the birth mother and parent the child by doing a number of things before the birth of the child which the court found profoundly compelling and sufficiently significant to constitute "good cause" under MCL 710.25(2). *Id*. at 563-64. He attempted to send the birth mother financial support on three separate occasions and provided support to the birth mother through her attorney on four occasions, he took extensive in-person parenting classes and worked with a licensed Michigan social services agency during the pregnancy to prepare to be a father, he opened a bank account in the child's name, he filed a notice of intent to claim paternity, and finally, before the adoption petition, he filed a paternity action, which he pursued vigorously. *Id.* at 550-54. The Court of Appeals found that there was no doubt that Mr. Mattson was the biological father, Mr. Mattson made exceptional efforts before the filing of the adoption petition, and that these

efforts together with the fact that there was a pending paternity action before the adoption petition was filed, constituted good cause under MCL 710.25(2) to allow the already pending paternity action to go forward and halt the adoption proceedings. *Id.* at 563-64.

The *MKK* court did not hold that a pending adoption action should be adjourned so that a paternity action could be pursued. The Court did hold that the specific combination of factors presented to them in *MKK* demonstrated good cause for the trial court to allow an already pending paternity action to move forward. *Id.* at 562. The *MKK* court went on to articulate the factors it found compelling in deciding that Mr. Mattson had demonstrated good cause for adjourning the adoption action and allowing the already pending paternity action to move forward. In sum, the Court of Appeals in *MKK* considered: (1) the biological connection, (2) the putative father's demonstrated desire to support and parent the child, and (3) the timing of putative father's pursuit of paternity. Each of these factors are discussed below and analyzed under the facts of this case.

A. Respondent's eventual ability to prove his biological connection to the child is not enough to establish good cause.

First, *MKK* iterated the importance of a biological connection to the child, but was clear that a biological connection alone will not suffice. 286 Mich App at 563 (holding that a biological connection *in addition* to the other efforts Mr. Mattson had taken were enough to provide good cause). *MKK*'s holding with respect to the biological connection is in concert with constitutional jurisprudence from the United States Supreme Court. *See Lehr v Robertson*, 463 US 248, 261; 103 SCt 2985 (1983) . The United Supreme Court in *Lehr* observed that "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Lehr*, 463 US at 261,

quoting *Caban v Mohammed*, 441 US 380, 397; 99 S Ct 1760 (1979) (Stewart, J., dissenting). The high court in *Lehr* further explained the interplay between the rights afforded to a putative father and the relationship the putative father has forged with his offspring:

> The difference between the developed parent-child relationship that was implicated in *Stanley* and *Caban*, and the potential relationship involved in *Quilloin* and this case[3], is both clear and significant. When an unwed father demonstrates **a full commitment to the responsibilities of parenthood by "[coming] forward to participate in the rearing of his child**," *Caban*, 441 U.S., at 392, his interest in personal contact with his child acquires substantial protection under the Due Process Clause. At that point it may be said that he "[acts] as a father toward his children." *Id*., at 389, n. 7. **But the mere existence of a biological link does not merit equivalent constitutional protection.** The actions of judges neither create nor sever genetic bonds. "[The] importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in '[promoting] a way of life' through the instruction of children . . . as well as from the fact of blood relationship." *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 844 (1977) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231-233 (1972)).
>
> **The significance of the biological connection is that**

---

[3] *Compare Stanley v Illinois*, 405 US 645; 92 S Ct 1208 (1979) (Putative father given deference to adopt children after their mother passed when he had "sired and raised" them) and *Caban v Mohammed*, 441 US 380; 99 S Ct 1760 (1979) (Putative father who had "established a substantial relationship with the child and ha[d] admitted his paternity" was entitled to the same treatment as a mother in a potential adoption of their child born out of wed lock) with *Quilloin v Walcott*, 434 US 246; 98 S Ct 549 (1978) (allowing state to differentiate and grant lower deference to a putative father who has not "shouldered any significant responsibility for the child's rearing" versus the rights and deference granted to a divorced father in determining an adoption petition) and *Lehr v. Robertson*, 463 US 248; 103 SCt 2985 (1983) (holding that failure to give notice of a pending adoption proceeding to a putative father who had never established a substantial relationship with his child did not violate the putative father's due process or equal protection rights).

> **it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development.** If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.

Lehr, 463 US at 261-262 (emphasis added).

Likewise, in *Sinicropi v Mazurek*, 273 Mich App 149, 186; 729 NW2d 256 (2006), the Court of Appeals rejected a biological father's constitutional claims after the denial of his request for an order of filiation. The Court of Appeals in *Sinicropi* recognized that biology was not enough, but instead turned to whether there was a "substantial or enduring parent-child relationship with the child." *Sinicropi,* 273 Mich App 171 (biological father sought order of filiation when child was five years old and had been cared for by his mother and the man who signed the acknowledgment of parentage), citing *Lehr v Roberston,* 463 U.S. at 260-261. The Court of Appeals rejected the paternity claim brought by the biological father because he did not have a "substantial or enduring parent-child relationship with the child." *Sinicropi*, 273 Mich App at 171.

The Court of Appeals recently addressed the biological connection in the context of *MKK* and MCL 710.25. *In re J, Minor*, unpublished curiam opinion of Court of Appeals, issued June 24, 2014 (Docket No. 319359) (attached at **Tab C**). The putative father in *J, Minor* appealed the Trial Court's order terminating his parental rights, but the Court of Appeals held that a biological connection "alone did not constitute good cause to stay the proceedings." *Id.* The Court of Appeals reasoned that a DNA test is only conclusive on "the identity of the father," but that "status as the biological father did not transform him from a putative father into a legal father." *Id.* Finally, the Court of Appeals reiterated that the only

way a biological father can become a legal one is "by an order of filiation or judgment of paternity." *Id.* (citing MCL 722.717). The Court of Appeals went on to affirm the termination, holding that "while respondent demonstrated an interest in providing support or care for the mother or the child, he never actually provided "substantial and regular support or case" commensurate with his ability. *Id.* at *3.

In the instant case, despite the factors established in *MKK* to honor the Legislature's intended meaning of "good cause" in MCL 710.25, the Trial Court incredibly found good cause, in contravention of the facts and law. (06/12/14 COA Opinion, p. 1). In fact, the only factor that Musall could establish under *MKK* was a biological connection. Consistent with the United States Supreme Court in *Lehr* and the Court of Appeals in *MKK,* Mr. Musall's biological connection alone does not reach the level of good cause.

B. Respondent failed to demonstrate an interest in parenting the child or in providing her support.

Second, *MKK* emphasized the importance of a putative father's demonstrated interest in parenting and efforts to provide support so as to show a reason for a stay other than to "thwart the adoption proceedings." 286 Mich App at 562. A determination of a putative father's "efforts to provide support and prepare for fatherhood" allows courts to make a flexible determination that can take other aspects into consideration, such as an individual's inability to provide support or denied attempts to provide support. 286 Mich App at 563. The analysis in *MKK* turned on the fact that Mr. Mattson took extensive steps to prepare to be a parent. *Id.* at 563. Importantly, this factor suggests that these efforts should have been analyzed under MCL 710.39(2) as a "do something" father because he had made "efforts to provide support and prepare for fatherhood" by taking many affirmative

actions before and after the child's birth. *Id*.

The putative father in *MKK* attempted to provide financial support to the birth mother by mailing money directly to the mother on three separate occasions and then to her attorney on four occasions and offering to help her with medical bills. 286 Mich App at 552. When all of his offers of support were rebuffed, he opened a bank account for the child where he deposited his intended support for the child; he took extensive parenting classes before the birth of the child; and he worked with social services on his parenting skills to become prepared to parent before the child's birth. *Id.* at 562-564.

None of these indicia exist in the instant case. Even accepting all of Musall's testimony as true, at most, during the pregnancy he provided $200 and a garbage bag full of clothes for both Gracie and Adelyn. (I:83, 166). He has provided literally nothing to Adelyn since she was born. Mr. Musall admitted that he had not seen Adelyn since September 2012. (I:80). He admitted that since Adelyn's birth he had never given money to Kayleigh or purchased any items for the child. (I:81-82). Moreover and apart from the amount of support, Musall is unable to demonstrate any efforts he made to prepare himself to be a father. As such, he cannot meet this factor of *MKK* to demonstrate good cause.

C. Respondent unreasonably delayed in attempting to establish his paternity to the child.

Finally, *MKK* was clear that timing would not be the sole determination, so as not to create a "race to the courthouse," but nevertheless allows courts to consider whether the action was filed merely as an effort to thwart the adoption proceedings. *Id.* at 562. *MKK* emphasized the importance of timing and that there be no "unreasonable delay" to establish paternity. 286 Mich App at 564. The putative father in *MKK* had filed a notice of intent to

claim paternity during the pregnancy, and then filed a paternity action shortly after the child's birth. *Id.* at 562-564. Based on those facts, the Court of Appeals held "[t]his is not a case in which a putative father delayed filing a paternity action for many months or years, or until an adoption petition had already been filed." *Id.* at 563. While the *MKK* Court held that the timing is just one factor to determine good cause, it was sufficient in addition to the putative father's efforts to support and prepare for the child for the Court to determine that he was not merely filing in an effort to thwart the adoption plan. *Id.*

In the instant case, Respondent-Musall never filed a notice of intent to claim paternity, and he waited until Adelyn was 11 months old before filing a paternity action. In fact, he only filed his paternity action as a result of the adoption petition, which had been filed 5 weeks earlier. (Appellee's Supplemental Brief, p. 11). The Court of Appeals held Musall did not wait an unreasonable amount of time, reasoning that he did not file because he thought he and Kayleigh would be able "work something out," but that "[o]nce the adoption petition was filed, it became that [he] would not be able to informally negotiate with the mother and her family for access to the child, and he promptly filed his complaint for paternity." (06/12/14 COA Opinion, p.2).

Yet Mr. Musall admitted that he had not seen Adelyn since September 2012 and he had never paid child support. Mr. Musall delayed many long months before filing, and only filed because the adoption proceeding has been filed. Indeed, based on Respondent-Musall's actions and his Supplemental Brief, it appears that the *only* reason he filed the motion to adjourn the adoption case was to thwart the adoption by establishing paternity because he knew he could not establish substantial and regular support of the biological mother or the child. This Court can infer from the facts in the record that the reason Mr. Musall did not seek to establish paternity sooner is because Respondent did not want to

incur a support obligation, which would be the unavoidable consequence of establishing paternity. MCL 722.717(1) (the order of filiation must provide for the support of the child; MCL 722.717(2) (the order of filiation must provide that the legal father pay for the "necessary expenses connected to the mother's pregnancy and the birth of the child.").

The overarching theme of the *MKK* decision is the series of significant efforts made by the putative father to care for mother and child before an adoption petition was filed. As observed in *MKK*, the good cause analysis turns more on the fact that the putative father was a "do something" father, plus the fact that he already had proof positive that he was biologically related to the child at the time of the proceedings. *MKK*, *supra* at 563-64. Ultimately, the good cause test fashioned by *MKK* allows guidance with necessary flexibility for courts to make case-by-case determinations. The *MKK* court found that all of these factors together constituted good cause to adjourn the adoption action and allow the paternity action to go forward. *Id.* In this way, *MKK* recognized the importance of the legislative mandate that adoption proceedings take precedence over all other actions absent good cause. *MKK*, 86 Mich App at 562. Respondent failed to establish adequate good cause under MCL 710.25 and *MKK*.

II. Respondent did not adequately demonstrate that he had "provided substantial and regular support or care" for the mother or child in accordance with MCL 710.39(2) because he had no established custodial relationship with the child, provided the Biological Mother at most $200 and a garbage bag of used clothes during the pregnancy, and provided no support whatsoever after the birth of the child, including the 90 days before the notice of hearing date.

The Trial Court's finding and the Court of Appeals' affirmance that Mr. Musall was a "do something" father were clearly erroneous when the facts demonstrated that, at most, Derek Musall provided $200 during the course of Kayleigh's pregnancy, and zero support during the 90 days prior to receiving notice of the adoption hearing, and had no established custodial relationship with the child.[4] Mr. Musall's inactions and lack of interest do not qualify as "substantial and regular support and care" as required by the Adoption Code. MCL 710.39(2).

Section 39 of the Adoption Code sets forth the steps that the trial court must take in order to terminate the parental rights of a putative father. *In re TMK*, 242 Mich App 302, 303; 617 NW2d 925 (2000). The statute directs the trial court to engage in a multi-step process. The first step of the purely statutory process is to determine whether the putative father is a "do nothing" or "do something" putative father. MCL 710.39. A "do nothing" putative father is a father who has failed to provide substantial and regular support or care to the mother or child. MCL 710.39(1). To be a "do something" putative father, the putative father must demonstrate the following:

> If the putative father has established a custodial relationship with the child or has provided substantial and regular support or care in accordance with the putative father's ability to provide

---

[4] This Court did not request briefing on the issue of Mr. Musall's "established custodial relationship" with Adelyn. (11/26/14 SCT Order). In any event, the Trial Court did not find that Mr. Musall had an established custodial relationship with Adelyn, likely because, according to his own testimony, he saw her no more than a dozen times during her entire life. (09/23/13 Opinion, p. 5; I:244, 35).

> such support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him...

MCL 710.39(2).

The Adoption Code specifically provides greater protections to the rights of a "do something" father because such a man has taken affirmative steps to either provide support or establish a custodial relationship. In such a case, the rights of the putative father can only be terminated through Child Protective Services and the Juvenile Code's abuse and neglect proceedings. MCL 712A.19b(3). Typically, if a trial court finds that a putative father is a "do something father," then the adoption case is dismissed.

In contrast, when a "do nothing" putative father requests custody, the Trial Court does not have to go through the rigors of the Juvenile Code. Instead, Section 39 only requires that the court inquire into "his fitness and his ability to properly care for the child." MCL 710.39(1). The trial court can terminate the do nothing putative father's rights if the trial court finds that it is not in the child's best interests to have custody awarded to him. MCL 710.39(1).

It is not enough that a father provided some support. "The support or care must be 'more than an incidental, fleeting, or inconsequential offer of support or care." *In re Dawson*, 232 Mich App 690, 694; 591 NW2d 433 (1998) (quoting *In re Gaipa*, 219 Mich App 80, 85; 555 NW2d 867 (1996)). Furthermore, it must be "substantial and regular." MCL 710.39(2). The *Gaipa* Court outlined that a trial court must consider many factors as to whether the support or care was provided including: "the father's ability to provide support or care, the needs of the mother, the kind of support or care provided, the duration of the support, whether the mother impeded the father's efforts to provide her with support,

and any other factors that might be significant." *Gaipa*, 219 Mich App at 86.

The courts have a very high threshold when it considers what constitutes an inability to provide support. Many of the cases that address whether a putative father should fall within 710.39(2) as a "do something" father consider whether the mother impeded the ability of the putative father to provide support or care. *See e.g.*, *In re Dawson*, 232 Mich App at 695. Most squarely on point is *In re RFF*, 242 Mich App 188; 617 NW2d 745 (2000).[5] The Court of Appeals in *RFF* reasoned that the Legislature did not intend to create a deceived father exception to the Section 39 requirement of "substantial and regular support." *Id.* at 199. When the Legislature amended the statute, it discussed its concerns that the previous statute, which only required "support or care" was "too low of a standard for a putative father to receive a hearing on the termination of his parental rights because even a minimal amount of support or care could be used to justify not having parental rights terminated without a hearing." *Id.* at 199-200.

There is no magic number of what constitutes substantial and regular support or care and what does not. Every case must be considered on its own facts. *In re Gaipa*, 219 Mich App at 86. The dissenting judge in *Gaipa* detailed that the findings of the trial court were sufficient to sustain the trial court's determination that the putative father had provided support and was a "do something" father because he purchased groceries, paid rent, and allowed the child's mother use of his vehicle during the pregnancy. *Id.* at 87 (Batzer, J., dissenting). Importantly, the majority in *Gaipa* did not determine that these facts alone were sufficient to amount to substantial support and remanded for further evidence. *Id*. at 86.

---

[5] Respondent argues in his Supplemental Brief that this Court should not consider *RFF* because that decision improperly limited "support and care" to "financial support." (Appellee's Supplemental Brief, p. 21 n. 5). Regardless of the Court of Appeals' interpretation of the word "support" under the specific facts of *RFF*, Mr. Musall did not provide support or care, financial or otherwise.

The Court of Appeals has determined that merely filing a notice of intent to claim paternity does not constitute substantial and regular support. *In re Dawson*, 232 Mich App at 695. The Court of Appeals has determined that making "an effort to be involved and decide what [is] best for the child . . . does not constitute substantial and regular support or care for the purposes of [MCL 710.39(2)]." *In re RFF*, 242 Mich App 188, 200-01; 617 NW2d 745 (2000).

A. Respondent did not provide "substantial and regular" support or care during Kayleigh's pregnancy.

The Trial Court's findings regarding Mr. Musall's support during Kayleigh's pregnancy are clearly erroneous. Mr. Musall admitted that he did nothing to support Kayleigh during her pregnancy with Adelyn, with the exception of giving her $200 and a garbage bag full of new and used clothes for both Gracie and Adelyn. (I:83, 166).

> Q. But, by your own admission, you didn't do anything to support her during that pregnancy?
>
> A. Not her solely, no.

(I:166). Mr. Musall admitted that he only filled up her gas tank or gave her cash on a few occasions while she was pregnant with Adelyn when she would exchange their oldest daughter, Gracie, with him, indicating the total amount of support would have been a little over $200. (I:71-73). He then confessed that his pleadings before the Trial Court may have been inaccurate because he may have confused support that he gave to Kayleigh during her pregnancy with Gracie with support he may have given her during her pregnancy with Adelyn. (I:74). It is not clear whether Mr. Musall gave this paltry amount of money to Kayleigh out of a concern for supporting her pregnancy of Adelyn or as support for Gracie. Kayleigh testified that he never gave her cash assistance during the pregnancy with Adelyn

or after Adelyn's birth. (I:32-33, 37). She testified that she requested assistance from him, and he would make offers of assistance, but never "came through." (I: 50).

Even taking the testimony in the light most favorable to Mr. Musall, he did not provide "substantial ***and*** regular support" to Kayleigh during her pregnancy. At most, he gave her some cash on three occasions when he was reminded that he was a father because he was exercising visitation with their oldest child, Gracie. Mr. Musall knew about the pregnancy from the start, and yet he still did little to nothing to support his unborn child. (I:30, 70). He knew where Kayleigh and Adelyn lived. (I:38; I: 214-15). Although the Trial Court found that Kayleigh and Pam Schnebelt impeded Mr. Musall's ability to form a custodial relationship with Adelyn, nothing in the record indicates that he was prevented from providing support to Kayleigh or Adelyn. Indeed, he admitted that he had ways to contact Kayleigh and he knew where she lived. (I:214-15).

B. Respondent completely failed to provide any support or care during the 90 days before the notice of hearing.

The Trial Court did not find that Mr. Musall provided substantial and regular support during the 90 days before being served the notice of hearing in the adoption matter. Indeed, the record provides that Mr. Musall provided **zero support** to his daughter during the 16 months of her life up to the adoption hearing. (I:166-167). The critical time period under MCL 710.39(2) is December 25, 2012 to March 25, 2013 – the 90 days preceding the notice of hearing.

Mr. Musall admitted that since Adelyn's birth he had never given money to Kayleigh or purchased any items for the child. (I:81-82). Kayleigh testified that she asked him for support or he would offer support, and he never came through. (I:32, 50). Her mother

corroborated this testimony. (II:79). The record plainly establishes that Mr. Musall provided zero support during this 90-day time frame, and he cannot be considered a "do something" father.

Mr. Musall argues that he was hindered from providing support due to actions of Kayleigh and her parents, and therefore, he did provide support within his ability. (Appellee's Supplemental Brief, p. 22-24). It is important to note that, although the Trial Court found that Kayleigh and the Schnebelts impeded his ability to have a custodial relationship with the child, the Trial Court did not find that they impeded his ability to provide support or care. (09/26/13 Opinion, p. 5). He was more than capable of mailing support or even dropping off diapers and formula on the front door, which he never did. (I:81-82). Indeed, Mr. Musall makes great pains to point out to this Court that Mr. Musall is in a financially stable position to where he could provide financial assistance. (*See* Appellee's COA Brief, pp. 5-6).

III. The Trial Court did not give adequate consideration to the legislative mandate that all adoption proceedings be given "highest priority."

The Adoption Code is a statutory creation in contravention of the common law. As such, it must be strictly construed. *In re RFF,* 242 Mich App 188, 617 NW2d 745 (2000). The Adoption Code states unequivocally that adoption proceedings "shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition." MCL 710.25(1). Moreover, the Adoption Code mandates that "[i]f conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount." MCl 710.21a(b). Taking the plain language of the Adoption Code, adoption cases are given the highest priority, which means

they are also higher in priority than paternity cases. *See, e.g., In re Brookman*, unpublished per curiam opinion of Court of Appeals, issued April 7, 2009 (Docket No. 287131) (attached at **Tab D**).

Very few cases cite this provision of the Adoption Code, and even when cited, the courts have not analyzed this provision. This Court cited MCL 710.25(1) in *In re Seitz*, 441 Mich 590; 495 NW2d 559 (1993). *Sietz* arose from a judicial tenure commission proceeding, in which the commission ultimately recommended removal from the bench. In *Seitz*, the judge was accused of a number of instances of misconduct, including refusal to promptly dispose of adoption matters. *Id.* at 573. Specifically, the commission found a "persistent failure to perform judicial duties pursuant to MCR 9.205(C)(2); a violation of the statutory directive that adoption cases are to have the highest priority in scheduling with an end to the earliest possible disposition." *Id.* (citing MCL 710.25(1)). This Court agreed, holding that such activity is misconduct subject to judicial sanction, and it ultimately affirmed the commission's recommendation, removing the judge from the bench entirely. *Id.* at 576.

The Court of Appeals cited MCL 710.25(1) in *MKK*, and incorporated the concept of "highest priority" for adoption cases in its analysis of whether the putative father unreasonably delayed in pursuing paternity. As discussed above, the putative father in *MKK* did not unreasonably delay because he filed a notice of intent to claim paternity before the child was born and filed the paternity action shortly after the child's birth and before the filing of the adoption case.

Allowing this case to stand will allow further misuse of these statutes, and our Legislature deserves greater deference than what lower courts have shown. Here, the Trial Court adjourned the adoption case in favor of the paternity proceedings **three times** – (1) an adjournment from April 22, 2013 until May 17, 2013, so that Mr. Musall could obtain

genetic testing, which the Trial Court in the paternity case had granted on April 16, 2013; (2) an adjournment from May 17, 2013 until July 19, 2013 because "the paternity results are not in"; (3) after two full days of evidentiary hearing in the adoption case, the Trial Court adjourned the adoption case so that it could render its decision on the paternity action.

Here, the mother initiated an adoption proceeding in January 2013. (01/07/13 Petition to Adopt). She then filed a petition to identify the father and determine or terminate his parental rights, as required by the Adoption Code. MCL 710.34. More than a month after Kayleigh filed her adoption petition, Mr. Musall filed a paternity complaint. (02/15/13 Paternity Complaint; Paternity ROA). The paternity action is a separate action from the adoption case, with separate case codes, and separate registers of actions. Both the paternity action and the adoption case were assigned to Judge Thomas Dignan.

Mr. Musall never filed a notice of intent to claim paternity. MCL 710.33. Nonetheless, on March 26, 2013, Kayleigh served Mr. Musall with the notice of hearing for the adoption hearing. MCL 710.34. For reasons that are unclear, but appear to be related to Mr. Musall's quest for DNA results, the adoption hearing was adjourned until July 19, 2013. (05/28/13 NOH; 05/17/13 Motion to Proceed with Hearing). Mr. Musall obtained an order to obtain genetic testing on April 16, 2013. (04/16/13 Order for Genetic Testing; Paternity ROA).

While he was waiting for the testing results, Mr. Musall then filed a motion to adjourn the adoption proceeding. (06/20/13 Motion to Adjourn). The hearing for that motion was scheduled for July 11, 2013, but did not occur on the record. (06/201/3 NOH). Instead, it appears that the Trial Court and Mr. Musall's attorney had an off the record conversation. (I:9-10). The end result was that the Trial Court did not rule on the motion to adjourn, but instead told Mr. Musall's attorney to bring the DNA results with him to the adoption hearing

that was scheduled for July 19, 2013. (I:5).

The hearing on July 19, 2013 was exclusively an adoption proceeding. (05/28/13 NOH). No hearing had been noticed in the paternity case. (Paternity ROA). The Trial Court obtained the DNA results, which indicated a greater than 99% chance that Mr. Musall was Adelyn's biological father. (I:5). The Trial Court proceeded with a lengthy evidentiary hearing in the adoption case, hearing the testimony of four witnesses, and which lasted all day. (07/19/13 Transcript). The adoption hearing was scheduled to be concluded on August 16, 2013.

After the first day of the adoption hearing, Mr. Musall filed a motion for summary disposition in the paternity case so that he could establish himself as the legal father of Adelyn. (07/24/13 MSD; Paternity ROA). The motion for summary disposition was also scheduled to be heard on August 16, 2013.

The parties convened on August 16, 2013. The transcript from that day appears to switch back and forth between the adoption case and the paternity action. The Trial Court entertained lengthy arguments by the parties about the motion for summary disposition and also on Mr. Musall's previously filed motion to adjourn the adoption proceeding, even though the latter was not noticed for August 16, 2013. (II:5-9, 23-37, 205-240; Adoption ROA). The Trial Court did not rule on either motion at the hearing. Instead, the parties presented seven witness for the adoption case. (08/16/13 Transcript). At the conclusion, the Trial Court took the adoption petition under advisement. (II:264).

The Trial Court found that there was "good cause to consider the paternity claim first." (09/26/13 Opinion, p. 5). In its opinion, the Trial Court spent a significant amount of time discussing the relationship between Respondent and the parties' first child, Gracie, rather than his relationship with Adelyn. The Trial Court then acknowledged the discrepancy

between Respondent's and Petitioners' accounts of the efforts made and support given by Respondent, yet determined that Petitioners "for whatever reason . . . decided to limit [Respondent's] participation in Adelyn's life." (09/26/13 Opinion, p. 5). Ultimately, the Trial Court stated that it did not find the timing to be determinative in the case, holding instead that "Derek Musall is the legal father of Adelyn Schnebelt." (09/26/13 Opinion, pp. 5-6).

By repeatedly adjourning the adoption case in favor of the paternity action, and then, by improperly consolidating the paternity and the adoption cases, the Trial Court attempted to leap frog through the procedures required by law in order to have a more favorable outcome to Mr. Musall. In total, the Trial Court adjourned the adoption proceeding not once or twice, but three separate times, prioritizing the paternity action again and again. The final adjournment was even after the court held two days of an evidentiary hearing on the adoption issue. Through its actions and decisions during this procedural history, the Trial Court failed to treat the adoption case with the highest priority as required by statute.

CONCLUSION

The Trial Court failed to honor the Legislature's intent in enacting Section 25 of the Adoption Code because the Trial Court adjourned the adoption case three times in favor of the paternity action. Respondent failed to demonstrate that he had good cause to adjourn the adoption case in favor of the paternity action, and Respondent cannot satisfy the factors set forth in the *MKK* decision. His biological connection to the child is not enough to overcome his delay in pursuing paternity of child, particularly when he failed to provide substantial and regular support to the child during the mother's pregnancy or during the 90 days before the notice of hearing in the adoption case. Without any attempt to support his daughter during her 11 months on the planet, Respondent instead filed a

paternity action five weeks after the adoption case commenced. By elevating the paternity action over the adoption case, the Trial Court disregarded the legislative mandate to give adoption cases the "highest priority" and to require good cause to adjourn an adoption case.

REQUEST FOR RELIEF

Appellants respectfully requests that this Court reverse the Trial Court's and Court of Appeals' decisions, and remand for the Trial Court to conduct a best interests hearing under MCL 710.39(1).

Dated: January 21, 2015

Respectfully submitted,

/s/ Liisa R. Speaker

Liisa R. Speaker (P65728)
Attorney for Plaintiff/Appellant
Speaker Law Firm, PLLC
230 North Sycamore Street
Lansing, MI 48933
(517) 482-8933
lspeaker@speakerlaw.com